



Office of Investment Security

31 CFR Part 802

Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The rule would amend the regulations that implement the provisions relating to real estate transactions pursuant to section 721 of the Defense Production Act of 1950, as amended. Specifically, the rule would add eight military installations to the appendix and make corresponding revisions to the definition of the term “military installation.”

DATES: Written comments must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal government eRulemaking portal at <https://www.regulations.gov>.

Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury Department to make the comments available to the public.

- *Mail:* Send to U.S. Department of the Treasury, Attention: Meena Sharma, Deputy Director of Investment Security Policy and International Relations, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

We encourage comments to be submitted via <https://www.regulations.gov>. Please submit comments only and include your name and company name (if any) and cite “Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States” in all correspondence. In general, the Treasury Department will post all comments to

<https://www.regulations.gov> without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations; or James Harris, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: *CFIUS.FIRRM@treasury.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The regulations at part 802 to title 31 of the Code of Federal Regulations (part 802) implement the provisions in section 721 of the Defense Production Act of 1950, as amended (DPA), and establish the process and procedures of the Committee on Foreign Investment in the United States (CFIUS) with respect to reviewing transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States.

The final rule establishing part 802 (see 85 FR 3158) identifies a subset of military installations around which certain real estate transactions are covered under CFIUS jurisdiction. The specific military installations are listed in appendix A by name and location. Section 802.227 sets forth the category descriptions of military installations identified in Appendix A. The preamble to the final rule establishing part 802 noted that the military installations listed in the appendix were determined by the U.S. Department of Defense based upon an evaluation of national security considerations, and that the Department of Defense will continue on an ongoing basis to assess its military installations and the geographic scope set under the rules to ensure appropriate application in light of national security considerations.

This proposed rule would make certain amendments to part 802 as a result of the ongoing evaluation of military installations by the Department of Defense.

II. Discussion of the Rule

This proposed rule would amend the definition of “military installation” at § 802.227 and add eight military installations to the list at appendix A.

A. Military Installation

This proposed rule includes an amended definition of the term “military installation.”

As defined in the existing regulations, the term “military installation” means any site that meets certain category descriptions, as identified in the list at appendix A to part 802.

The definition of “military installation” would be amended with respect to paragraph (m) of § 802.227. This proposed rule would add Arizona, California, Iowa, North Dakota, South Dakota, and Texas to the set of states listed in paragraph (m).

B. Appendix A

The appendix to the existing regulations identified bases, ranges, and other installations that meet the definition of “military installation” at § 802.227, and, as applicable, related counties or other geographic areas throughout the United States that are covered real estate for the purposes of this part.

This proposed rule would include revisions to appendix A to include the eight sites listed below.

- Air Force Plant 42, located in Palmdale, California
- Dyess Air Force Base, located in Abilene, Texas
- Ellsworth Air Force Base, located in Box Elder, South Dakota
- Grand Forks Air Force Base, located in Grand Forks, North Dakota
- Iowa National Guard Joint Force Headquarters, located in Des Moines, Iowa
- Lackland Air Force Base, located in San Antonio, Texas
- Laughlin Air Force Base, located in Del Rio, Texas
- Luke Air Force Base, located in Glendale, Arizona

III. Rulemaking Requirements

Executive Order 12866

This rule is not subject to the general requirements of Executive Order 12866, as amended, which covers review of regulations by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), because it relates to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In addition, this rule is not subject to review under section 6(b) of Executive Order 12866 pursuant to section 7(c) of the April 11, 2018 Memorandum of Agreement between the Treasury Department and OMB, which states that CFIUS regulations are not subject to OMB's standard centralized review process under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis, unless the agency certifies that the rule will not, once implemented, have a significant economic impact on a substantial number of small entities. The RFA applies whenever an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553), or any other law. As set forth below, because regulations issued pursuant to the DPA, such as these regulations, are not subject to the APA, or other law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

This proposed rule makes amendments to the regulations implementing section 721 of the DPA. Section 709(a) of the DPA provides that the regulations issued under it are not subject to the rulemaking requirements of the APA. Section 709(b)(1) instead provides that any regulation issued under the DPA be published in the Federal Register and opportunity for public comment be provided for not less than 30 days. Section 709(b)(3) of the DPA also provides that all comments received during the public comment period be considered and the publication of the final regulation contain written responses to such comments. Consistent with the plain text of the

DPA, legislative history confirms that Congress intended that regulations under the DPA be exempt from the notice and comment provisions of the APA and instead provided that the agency include a statement that interested parties were consulted in the formulation of the final regulation. See H.R. Conf. Rep. No. 102-1028, at 42 (1992) and H.R. Rep. No. 102-208 pt. 1, at 28 (1991). The limited public participation procedures described in the DPA do not require a general notice of proposed rulemaking as set forth in the RFA. Further, the mechanisms for publication and public participation are sufficiently different to distinguish the DPA procedures from a rule that requires a general notice of proposed rulemaking. In providing the President with expanded authority to suspend or prohibit certain real estate transactions involving foreign persons if such a transaction would threaten to impair the national security of the United States, Congress could not have contemplated that regulations implementing such authority would be subject to RFA analysis. For these reasons, the RFA does not apply to these regulations. Regardless of whether the provisions of the RFA apply to this rulemaking, for reasons noted in the preamble to the final rule establishing part 802 (see 85 FR 3158), the Treasury Department determined that the implementation of the provisions of section 721 relating to real estate transactions would most likely not affect a substantial number of small entities. The amendments in this rule do not change that analysis or determination. Notwithstanding this certification, the Treasury Department invites comments on the potential impacts of this rule on small entities.

List of Subjects in 31 CFR Part 802

Foreign investments in the United States, Federal buildings and facilities, Government property, Investigations, Investments, Investment companies, Land sales, National defense, Public lands, Real property acquisition, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Treasury Department proposes to amend part 802 to title 31 of the Code of Federal Regulations to read as follows:

PART 802—REGULATIONS PERTAINING TO CERTAIN TRANSACTIONS BY FOREIGN PERSONS INVOLVING REAL ESTATE IN THE UNITED STATES

1. The authority citation for part 802 continues to read as follows:

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

§ 802.227 [Amended]

2. Amend § 802.227 paragraph (m) by replacing “Oregon, Nevada, Idaho, Wisconsin, Mississippi, North Carolina, or Florida;” with “Arizona, California, Florida, Idaho, Iowa, Mississippi, Nevada, North Carolina, North Dakota, Oregon, South Dakota, Texas or Wisconsin;”.

3. Revise Part 2 of Appendix A to read as follows:

Appendix A to Part 802—List of Military Installations and Other U.S. Government Sites

Site name	Location
Part 2	
Aberdeen Proving Ground	Aberdeen, MD.
Air Force Plant 42	Palmdale, CA.
Camp Shelby	Hattiesburg, MS.
Cape Canaveral Air Force Station	Cape Canaveral, FL.
Dare County Range	Manns Harbor, NC.
Dyess Air Force Base	Abilene, TX.
Edwards Air Force Base	Edwards, CA.
Eglin Air Force Base	Valparaiso, FL.
Ellsworth Air Force Base	Box Elder, SD.
Fallon Range Complex	Fallon, NV.
Fort Bragg	Fayetteville, NC.
Fort Greely	Delta Junction, AK.
Fort Huachuca	Sierra Vista, AZ.
Fort Irwin	San Bernardino County, CA.
Fort Polk	Leesville, LA.
Fort Wainwright	Fairbanks, AK.
Grand Forks Air Force Base	Grand Forks, ND.
Hardwood Range	Necahuenemedah, WI.
Hill Air Force Base	Ogden, UT.
Iowa National Guard Joint Force Headquarters	Des Moines, IA.
Lackland Air Force Base	San Antonio, TX.
Laughlin Air Force Base	Del Rio, TX.
Luke Air Force Base	Glendale, AZ.
Mountain Home Air Force Base	Mountain Home, ID.
Naval Air Station Meridian	Meridian, MS.
Naval Air Station Patuxent River	Lexington Park, MD.
Naval Air Weapons Station China Lake	Ridgecrest, CA.
Naval Base Kitsap—Keyport	Keyport, WA.
Naval Base Ventura County—Point Mugu Operating Facility	Point Mugu, CA.
Naval Weapons Systems Training Facility Boardman	Boardman, OR.
Nellis Air Force Base	Las Vegas, NV.
Nevada Test and Training Range	Tonopah, NV.
Pacific Missile Range Facility	Kekaha, HI.
Patrick Air Force Base	Cocoa Beach, FL.
Tropic Regions Test Center	Wahiawa, HI.
Utah Test and Training Range	Barro, UT.
Vandenberg Air Force Base	Lompoc, CA.
West Desert Test Center	Dugway, UT.

White Sands Missile Range

Yuma Proving Ground

White Sands Missile Range,
NM.
Yuma, AZ.

Dated: April 27, 2023.

Paul Rosen,

Assistant Secretary for Investment Security.

[FR Doc. 2023-09259 Filed: 5/4/2023 8:45 am; Publication Date: 5/5/2023]